

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

MISCELLANEOUS DRIVERS & HELPERS,)	
LOCAL NO. 610)	
)	
Petitioner,)	
)	
vs.)	Public Case No. 80-005
)	
CITY-WIDE TRANSPORTATION,)	
ST. LOUIS, MISSOURI)	
)	
Respondent.)	

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION**

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation upon the Miscellaneous Drivers and Helpers Union, Local 610, filing a petition for certification as public employee representative of approximately 20 employees of Available City-Wide Transportation which provides transportation for the elderly and handicapped of The City of St. Louis. On May 15, 1980, a hearing was held in St. Louis, Missouri, at which representatives of City Wide, Local 610, and the City of St. Louis were present. The case was heard upon agreement by the parties by Chairman Berry who submitted the case by transcript to one employer member, and one employee member. For reasons set out below, the Board concludes that Available City-Wide Transportation is not a "public body" within the meaning of Section 105.500 (3), RSMo 1978. Consequently, the Board must dismiss Local 610's petition because it lacks jurisdiction.

FINDINGS OF FACT

Available City-Wide Transportation is the name given a program established by the Senior Citizens Service Area Council #6 (SCSAC # 6) to provide transportation for the elderly and handicapped of the City of St. Louis. SCSAC #6 is a general non-for-profit corporation established by private citizens under the laws of Missouri in October, 1976. The SCSAC #6 was established as a means by which to provide various services for St. Louis senior citizens. The SCSAC #6's membership is comprised of senior citizens elected from each of the City's wards. Those members elect the council's Board of Directors that oversees SCSAC #6's various programs.

The SCSAC #6, doing business as Available City-Wide Transportation, contracts with the City of St. Louis through the St. Louis Area Agency on Aging (SLAAA) to provide the transportation service. City-Wide Transportation is headed by an operations director who reports directly to the SCSAC #6 Board of Directors and the administrative director of the program. The SCSAC #6, doing business as City-Wide, employs approximately 12 drivers, one dispatcher, two secretaries, two part-time garage maintenance employees, and an accounting secretary. There are six persons serving City-Wide Transportation who are employees of the City of St. Louis. Two are full-time civil service employees, one is a full-time CETA employee, and three are part-time opportunity trainees hired under a federal Title V grant. Although the City employees have similar duties as those of the SCSAC #6 employees working in the City-Wide Transportation program, the City employees are supervised by St. Louis City personnel, are paid by the City, and must adhere to St. Louis City policies and procedures.

The federal government funds the City-Wide Transportation program in its entirety. Title III funds constitute 75.2% of the program's budget, while the remaining 24.8% is

Title XX funds. The money is deposited with the City comptroller who places the funds in an account separate from other city funds. The contract between City-Wide Transportation and St. Louis provides that no city funds are to be expended under the program. The City, through the SLAAA, advises City-Wide Transportation in accounting matters but has no direct control over the funds. The Board of Directors of the SCSAC #6 makes budgetary decision concerning the program. The budget is first drawn up by the program's administrative and operations directors and then approved by the Board. The SLAAA acts only in an advisory capacity concerning City-Wide Transportation's budget.

The operations director, Mrs. Beatrice Redman, is responsible for the day-to-day operations of the program. She purchases all goods necessary to maintain the program, hires and fires employees, and presents salary proposals to SCSAC #6 Board of Directors.

CONCLUSIONS OF LAW

For this Board to have jurisdiction to decide issues with respect to the representative status of public employee labor organizations, a "public body" must be the involved employer. That is, Section 105.510, RSMo 1978, provides that "employees...of any public body shall have the right to form and join labor organizations." (emphasis added) The issue before the Board, therefore, is whether the SCSAC #6, doing business as Available City-Wide Transportation, is a "public body" within the meaning of the statute. "Public body" as used in Missouri statutes relating to public sector labor law is defined as:

the state of Missouri, or any officer, agency, department, bureau, division, board or commission of the state, or any other political subdivision of or within the state.
Section 105.500(3), RSMo 1978.

The definition provides that a "public body" is the State of Missouri or any other political subdivision of or within the state, listing in the disjunctive specific examples of political subdivisions. In short, a "public body" is either the State of Missouri or a political subdivision thereof.

There is no case law which makes clear what constitutes a political subdivision so as to be considered a "public body" as that term is used in Section 105.510, RSMo 1978. The Missouri Supreme Court in State ex. rel. O'Leary v. Missouri State Board of Mediation, 509 S.W.2d 84 (Mo. banc 1974), held that juvenile court employees were paid by the State or Jackson County (a political subdivision). Although in that case the court focused more on whether the employees were public employees rather than whether the juvenile court was a "public body", the O'Leary decision is relevant to the present case. In the instant case City-Wide Transportation employees are paid by the SCSAC #6, a general non-for-profit corporation established by private citizens. The operating funds for the program are provided entirely by the federal government. The contract between the City and City-Wide Transportation states explicitly that no St. Louis City funds shall be spent on the program. Also, no state funds are expended in the program. Accordingly, the Board must conclude that the fact that the City-Wide Transportation employees are not compensated by the State or St. Louis City indicates that the City-Wide Transportation employees are not employed by a "public body" within the meaning of Section 105.510, RSMo 1978.

Further supporting the Board's decision is the case law arising out of the interpretation of federal law applicable to private sector labor law disputes. The NLRB, in determining whether an employer is a "political subdivision" within the meaning of Section 2(2) of the NLRB, consistently applies a two-part test. The NLRB will find an

employer a political subdivision of either (1) the entity was created directly by the state, so as to constitute a department or administrative arm of the government, or (2) if the entity is administered by individuals who are responsible to public officials or to the general electorate. NLRB v. Natural Gas Utility District of Hawkins County, 402 U.S. 600, 77 LRRM 2348 (1971); NLRB v. Highview, Inc., 590 F.2d 174, 100 LRRM 2829 (1979).

It is clear that the SCSAC #6, doing business as City-Wide Transportation, is not a political subdivision under the first test since it is undisputed that the SCSAC #6 is a general not-for-profit corporation created by private citizens. Obviously, SCSAC #6 was not created directly by the State of Missouri. Further, the Board must conclude that SCSAC #6 is not a political subdivision under the second test because the individuals who administer the program (The SCSAC #6 Board of Directors) are not responsible to public officials. Rather, the City of St. Louis, acting through SLAAA, acts only as an advisory body and has no control over the program. Also, the Board of Directors is not responsible to the general electorate but is instead elected by only the senior citizens of the community. Consequently, the SCSAC #6 cannot be considered a "public body" within the meaning of Section 105.500(3) because the Council is neither the State of Missouri nor a political subdivision of the state.

In its post-hearing "statement of position," Local 610 argues that if some employees are determined to be employees of the City of St. Louis, "then City-Wide Transportation is at very least a co-employer and the (Board) has jurisdiction over all employees." Absent from Local 610's argument is any basis upon which the Board could assert such jurisdiction. Local 610 cites no Missouri case law or State Board of Mediation precedent which holds that Section 105.500 et seq., RSMo 1978, authorizes this Board to assert

jurisdiction when one of the joint employees is not a public body. Therefore, the Board must conclude that Missouri public sector labor law does not authorize the Board to assert jurisdiction in such cases.

In conclusion, the Board dismisses Local 610's petition because the Board lacks jurisdiction in that SCSAC #6 is not a "public body" as defined in Section 105.500(3), RSMo 1978.

Signed this 27th day of August, 1980.

MISSOURI STATE BOARD OF MEDIATION

(SEAL)

/s/ Conrad L. Berry
Conrad L. Berry, Chairman

/s/ Herbert Shaw
Herbert Shaw, Employer Member

/s/ Robert Missey
Robert Missey, Employee Member